Supreme Court of the United States

OCTOBER TERM, 1948

No. 461

ANIBAL MONAGAS Y DE LA ROSA, ET AL.,
HEIRS, ETC., ET AL.,
Petitioners,

v.

NEFTALI VIDAL-GARRASTAZU,
Respondent.

PETITIONERS' CONCISE REPLY TO BRIEF IN OPPOSITION

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PETITIONERS' CONCISE REPLY TO BRIEF IN OPPOSITION

(Rule 38, subdiv. 4a)

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

I. Accuracy of petitioners' statement of the case.

Contrary to respondent's unwarranted assertion (his brief, p. 2), *petitioners' short statement fully depicts the pertinent factual situation involved here.* It contains all that is material to the consideration of the questions presented (Petition, pp. 2-8). On the other hand, it is respectfully submitted that respondent's appended (Appdx, pp. 1-9) so-called statement of events is misleading, because of

essential omissions of important facts and in view of groundless comments respecting proceedings and judgments in, at least, prior cases Nos. 10,416 and 783, which are unquestionably *res judicata* herein (see Petition, pp. 8-14, 16-36).

II. Sufficiency of questions presented and of reasons relied upon for allowance of certiorari.

A. Manifest conflict with applicable insular and federal precedents.

The *questions presented* and the *reasons relied on* for a certiorari (Petition, pp. 8-11, 11-14), *clearly exhibit a direct conflict with, and a violent departure from, firmly settled local law and the applicable local decisions* (Rule 38, subdiv. 5(b)), *prior as well as subsequent to judgment below.* Clear violence has also been done to specially apposite precedents set up by this Hon. Court (Petition, pp. 11-14). This is uncontrovertibly shown in *Petitioners' Brief,* pp. 16-36, which respondent has not seriously refuted. The Court of Appeals has not only discarded the decisions of this Court in *Calaf* v. *Calaf,* 58 L ed at p 645, 232 US 371, *Angel* v. *Bullington,* 91 L ed 832, *Heiser* v. *Woodruff,* 90 L ed 971, 327 US 726, among other multiple controlling decisions, *though conceding their appositeness particularly regarding the Calaf case* (R. 560 bot; 170 F 2d 106; *Petitioners' Brief,* pp. 33-36), but it has gone so far as to most erroneously rely, respecting the great public policy doctrine of *res judicata* here involved, *on a dissent in Angel* v. *Bullington,* 330 US 183, 201 *et seq.* (R. 561, note 3; *Monagas* v. *Vidal,* 170 F 2d 106 bot, footnote 3), *instead of enforcing and cordially applying the binding authority of this Court's majority decision therein.* Such ruling is also in direct conflict with that of the Fourth Circuit Court of Appeals in *Ditchman, Wright & Pugh* v. *Weade* (May 13, 1948), 168 F 2d 914, syll. 2, and at page 916, where Judges

Parker, Soper and Dobie held themselves "not at liberty to decide what merit lies" in a dissenting opinion rendered by the Federal Supreme Court, and concluded with this appropriate reminder for an orderly administration of justice: *"The Supreme Court, in the majority opinion, has spoken and we must follow"* (168 F 2d 916, col. 2 mid).

B. The sound and uniform application of the *res judicata* doctrine is a matter of local and national public concern in the administration of justice.

The *correct and uniform enforcement* of the *res judicata* doctrine is a matter of obvious national public interest and of great public concern in the administration of justice. It directly affects also the more than two million peoples of Puerto Rico. These American citizens are equally entitled to the benefits of public order, the respose of society and the quiet of families, *which are the lofty ends of justice and public policy behind the sound application of the fundamental and substantial doctrine of res judicata.* Those basic considerations have led this highest national Tribunal to urge the salutary *requirement that the rule should be cordially regarded and enforced by the courts. Hart Steel Co.* v. *Railroad Supply,* 61 L ed at p 1153, col. 1 bot, followed by the Puerto Rico Supreme Court itself in *Cintrón* v. *Yabucoa,* 54 PRR 493, syll. 3, page 499 top. The court below has prejudicially failed to follow such guiding principle, in lightly brushing aside, in the instant cause, at least two valid judgments rendered for petitioners in prior cases Nos. 10,416 and 783, between the same parties and involving the same matters.

It is urged, with all due respect, that the *res judicata* rule, being as it is a universal principle of public policy, should not be sterilized, nor even belittled, as unwarrantedly attempted by respondent, by merely labeling or calling it a matter of local law or practice, a fortiori when this Court has expressly held that *the doctrine, as applied*

in Puerto Rico, is substantially the same which prevails in continental United States (*Calaf* v. *Calaf*, 58 L ed at p 645, col. 1 mid; *Petition*, p. 13). Lastly, it should be recalled that this Hon. Court has reviewed and reversed lower courts, because of misapplication or departure from the *res judicata* rule which inescapably *concerns the orderly and uniform administration of justice* (cases in *Petition*, p. 14 mid).

III. Plain conflict or inconsistencies with well settled local law and the applicable insular and federal precedents in not holding prior judgments in Cases No. 10,416 and 783 to be *res judicata* herein.

A. Earlier judgment in No. 10,416.

1. *The questions presented involve a manifest clash with deeply rooted local principles and with applicable local and federal decisions prevailing prior and after the judgment herein.*

Respondent contends that the local supreme court has the right to reverse itself in the construction of local law (Brief in Opposition, p. 4 bot). But that simply misses the point. Such, for instance, as the question arising from the decision below that a judgment consented to by a mother with *patria potestas* over her minor son needs, *in an adversary action*, previous determination of necessity and utility by the very district court rendering the judgment under review. Petitioners' Brief, pp. 18-27, adequately shows that in Puerto Rico the established, inveterate practice and the unchanged well-settled local law and decisions, as existing before and after the judgment in the instant case, determine that in exercise of the parental right of *patria potestas*, parents absolutely represent their minor children *in inter-parte judicial proceedings*, such as was the earlier case No. 10,416, *without need of any previous*,

really superfluous judicial authorization; that the provisions of the local special act relative to *ex parte applications* for judicial authorization concerning alienation of minors' property are *inapplicable to adversary court proceedings;* that according to controlling federal and local decisions, even supposed lack of evidence is unavailing to trench upon the effect, as *res judicata,* of judgment in former case No. 10,416; that also in accord with local law and unquestioned federal precedents, *infants are bound by consent judgments* in actions wherein they are represented by their parents, a fortiori when such adjudications admittedly are, as here, for the benefit of the minor, as sworn to by respondent's mother in prior case No. 10,416 (R. 461 mid), where petitioners' ancestor, Juan A. Monagas, in complying with a condition in prior judgment No. 10,416, fully discharged a $20,000 mortgage-lien to relieve Vidal's heirs (respondent and his mother) of liability thereunder (*Petitioners' brief,* p. 25).

2. *Prior judgment in No. 10,416 cannot be collaterally impeached nor invalidated even if supposedly erroneous, which is not the case.*

Respondent claims that case No. 10,416 was a declaratory judgment to establish two allegedly *"erroneous legal conclusions"* (his brief, p. 5 mid). *But a judgment cannot be collaterally impeached merely because it was supposedly based "upon an erroneous view of the law",* which could have been corrected only by a direct review, and not through another action upon the same matter. *Baltimore SS Co* v. *Phillips,* 71 L ed 1070, syll. 5, p. 1074; *Stokke et ux* v. *Southern Pac. Co.,* 169 F 2d 42, syll. 2, p. 43; *Montgomery* v. *Equitable Life Assur. Co.,* 83 F 2d 739, syll. 12. And it is of no moment that the consent judgment in prior case No. 10,416 was not entered after full trial as intimated by respondent (his opposing brief, p 5 top). *In Puerto Rico, as in other jurisdictions, a consent decree*

admits the facts of the complaint, and cannot be collaterally assailed. Ex parte Morales (1911), 17 PRR 1004, 1006 bot; *Suárez* v. *Betancourt* (1945), 64 PRR 448, syll. 3 and 4; *Harding* v. *Harding*, 49 L ed 1066; *Snell* v. *J. C. Turnell Co.*, 285 Fed Rep 356, syll. 2, and at pages 358 bot. Even an alleged lack of evidence is unavailing to trench upon the *res judicata* doctrine. *Heiser* v. *Woodruff*, 90 L ed 971, syll. 8, 327 US 726; *Amadeo* v. *Compañía Azucarera del Toa*, 58 PRR 756, syll. 2, and at page 761 (*Petition*, pp. 21-22). It should also be recalled that the insular supreme court itself conceded that former judgment in No. 10,416 "*dealt with the same cause of action now before us, and concerned the same parties*" (R. 487 top).

B. Prior judgment in case No. 783.

Respondent states that judgment in prior action No. 783 is not *res judicata* on these minor grounds: (1) because the former action was *in rem* while as he erroneously asserts the present case for alleged liquidation of a dissolved partnership is in *personam;* and (2) in view that judgment in No. 783 was upon a demurrer, and so respondent thinks it was not on the merits (Brief in opposition, pp. 6-7).

1. Action in prior case No. 783 and the instant cause are not dissimilar; they comprise slightly different means to achieve the same object.

Respondent's first alleged point is successfully met by *Petitioners' Brief*, at pages 33-36. It is there elaborately shown that prior case No. 783 and the present action embody substantially the same means to attain the same result and that, therefore, the decision of this Hon. Supreme Court in *Calaf* v. *Calaf*, 58 L ed at p. 645, is decisive as to the conclusiveness of judgment in former suit No. 783. Furthermore, in No. 783, respondent and his mother like-

wise claimed that defendants therein (the Monagas) *"should proceed to liquidate and settle with the plaintiffs* [respondent and his mother], *by delivering to them all the fruits, rents, profits and utilities* yielded by the share corresponding to them in 'Belvedere Estate', *from September 17, 1921 until its final liquidation* and delivery, plus the corresponding legal interest" (R. 304 top: complaint in No. 783). Therefore, *it is evident that suit No. 783 and the case at bar involve identical causes for the alleged liquidation of the dissolved partnership Monagas & Vidal's only asset,* which consisted of the Belvedere farm (R. 483 top).

Respondent is additionally wrong in suggesting that an action for liquidation and settlement of real assets upon dissolution of a civil partnership is an action *in personam. In Puerto Rico it is a statutory action in rem.* The Civil Code of Puerto Rico, ed. 1930, *Section 268,* provides that a partner's right, after dissolution of the partnership, to claim liquidation and distribution of realty (immovables), *produces a real and not a personal action. Section 268, supra,* positively states:

> *". . . If the association be dissolved, the right which any of its members may have to claim the division of the immovables or a participation therein, shall produce an immovable action."*

2. *Judgment in earlier suit No. 783, though on demurrer, bars the instant litigation.*

Respondent's next contention is that judgment in case No. 783 is no bar to the present action because prior judgment in No. 783 was grounded on a demurrer. Such position is wholly untenable. Petitioners' *Supporting Brief* (at page 34, footnote 18), citing a vast body of authorities, conclusively demonstrates that in Puerto Rico, as in continental United States, it is a well-established and firm rule

that *"where a court in rendering judgment sustaining a demurrer for insufficiency of the complaint does not grant leave to amend, such judgment is a bar to another action between the same parties and upon the same facts."* This is also conceded by the Court of Appeals when it held that *"It is hard to see any substantial difference between the case at bar and Calaf* v. *Calaf, supra* [which also involved a prior judgment on demurrer], upon which appellants [petitioners here] heavily relied . . ." (See petitioners' brief, p. 34; R. 560 bot; 170 F 2d 106, col. 1 mid). The accepted rule in the United States, as concluded by this Hon. Court in *Angel* v. *Bullington,* 91 L ed 833, syll. 9, *Heiser* v. *Woodruff,* 90 L ed 971, col. 2 mid, and other ably reasoned and binding precedents, *is that a judgment on demurrer bars a subsequent litigation on the same cause, though brought in a different form of action or adopting a different method of presenting the case* (see petitioners' brief, p. 34, footnote 18, and page 35).

IV. Impropriety of respondent's reference to supposed misrepresentation in prior action No. 10,416, and respecting petitioners' title by adverse possession.

A. Regarding action No. 10,416.

Petitioners respectfully submit that respondent's allusion to any alleged misrepresentation concerning judgment in earlier case No. 10,416, and his attempt to connect it with petitioners' good faith in the adquisition of title by adverse possession (brief in opposition, pp. 4 bot, 5 top, 8-9), are entirely unwarranted. No averment as to fraud appears in the complaint in the present case (R. 1-5, 75-80). The 17-page opinion and judgment rendered by the Mayaguez trial court show no finding to have been made therein concerning any supposed misrepresentation (R. 146-164). The trial court evidently regarded respondent's mother's profferred testimony on such supposed misrepresentation

either wholly incredible[1] or ruled it out at the request of petitioners' trial counsel (R. 212 top, 212 mid, 213 bot). Yet, the Puerto Rico Supreme Court, on appeal, *unexpectedly* made the following statement: "Vidal's widow [respondent's mother] consented in writing to judgment [in prior action No. 10,416] for plaintiffs [petitioners]. As she now explains (without being contradicted by Monagas), she signed the written consent at the request of Juan Monagas, while confined in a clinic, and relying on his false representations regarding the contents and effect of the document" (R. 479 mid; but see footnote 1, *ante*). Thereupon, petitioners urged before the Court of Appeals a serious constitutional point of procedural due process: that in *unexpectedly reinstating* an issue ruled out by the Mayaguez trial court, without petitioners having presented their evidence because of that ruling, and in

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[1] Respondent's mother's oath or verification to her consenting answer to complaint in No. 10,416 (R. 461 mid) established beyond any doubt that she *could not have physically signed and made oath to her consenting pleading at Perea's Clinic on May 16, 1924, as she testified* (R. 211 mid), *since that pleading, on its face, definitely proves that she verified and subscribed the document on precisely the same date in the very presence of the clerk of the Mayaguez trial court* (R. 461 bot), *at a place and before persons quite different from those mentioned by Vidal's widow.* Dr. Perea's affidavit, as medical-director of the Perea's Clinic, at Mayaguez, also shows that *respondent's mother left Perea's Clinic on January 18, 1924* (R. 535 top), *some four months before May 16, 1924* (R. 461) *when she falsely stated to have been an inmate in that Clinic* (R. 211 mid) at the signing of answer to complaint in prior case No. 10,416 (R. 211-213). *May 16,* as already stated, was precisely the date when respondent's mother appeared before the clerk of the Mayaguez trial court to personally verify her consenting answer in case No. 10,416 (R. 461 bot). That testimony, *opposed by obvious physical facts,* could not be credited by any court, even though it might have stood uncontradicted. *Deadrich* v. *United States,* 74 F2d 619; *United States* v. *Hansen,* 70 F2d 230, syll. 4 (physical facts must control); *Walkup* v. *Bardsley,* 111 F2d 789, syll. 3; *Carter* v. *Kurn,* 127 F2d 416, syll. 4; *Galloway* v. *United States,* 130 F2d 467, syll. 10, affd *Galloway* v. *United States,* 87 L ed 1460; *Quock* v. *United States,* 35 L ed 501.

proceeding to adjudge that issue and the case against petitioners herein, *the supreme court of Puerto Rico acted inconsistently with the record and the decision of this United States Supreme Court in Saunders* v. *Shaw,* 244 U S 317, 320, 61 L ed 1163, 1165, col. 2 bot.

The Court of Appeals, referring to said question of due process of law, stated: *"But the Supreme Court of Puerto Rico did not dispose of the case at bar on the ground of any fraud practiced by the above Monagas* [petitioners' ancestor] *upon the plaintiff* [respondent here]. *It disposed of the case upon other grounds altogether and hence the above statement if erroneously made is immaterial."* (*Monagas* v. *Vidal,* 170 F 2d 107; R. 563). Respondent himself, expressly stated in his brief before the Court of Appeals (his Appdx to brief in opposition, pp. 36-37), that: *"The Finding was Immaterial to the Judgment in the Present Case",* which exhibits even respondent's conviction or infelt realization as to the falsity or incredibility, as well as to the immateriality of the testimony on the supposed misrepresentation. Respondent additionally conceded (his Appdx, pp. 36-37) that such unanticipated statement by the insular supreme court "was neither essential nor necessary to the judgment", that it was "completely irrelevant because . . . the amended complaint herein does not charge the appellants [petitioners herein] with any fraud or fraudulent conduct", and that the judgment in the case at bar was "decided on other grounds".

In view of the foregoing, is it fair or proper for respondent to inject in his opposing brief here any issue or question on alleged misrepresentations which were even by respondent admitted to be, and by the Court of Appeals held, immaterial and which did not serve as basis of the decisions below?

B. Respecting petitioners' title by adverse possession.

As to the good faith and just title through adverse possession in petitioners' ancestor, it was a matter explicitly thus adjudicated in prior case No. 783 (R. 342 mid-349 mid). That former judgment in case No. 783, whether right or wrong, is *res judicata* in this subsequent litigation between the same parties. *Baltimore SS Co.* v. *Phillips*, 71 L ed 1070, syll. 5, p. 1074; *Heiser* v. *Woodruff*, 90 L ed 971, syll. 11. Petitioners have duly shown, in their Brief, pp. 36-38, that in not upholding such earlier judgment in No. 783, the Court of Appeals manifestly ignored the binding requirements of local law and of supporting insular and federal precedents (Petition, pp. 36-38).

In short, respondent has utterly failed to disturb petitioners' clear showing of plain inconsistencies with well-settled local practices and the obligatory decisions of this Hon. Court, particularly as it all affects the orderly and cordial application of the public policy doctrine of *res judicata*.

WHEREFORE, petitioners' prayer that a writ of certiorari be granted herein, is respectfully reiterated.

Ponce, Puerto Rico, January 12, 1949.

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Copy of petitioners' foregoing reply was served by registered mail on R. Castro Fernández, Esq., P.O. Box 2926, San Juan, Puerto Rico, as attorney for respondent, this 12th day of January, A.D., 1949.

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